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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/804,583	03/18/2004	Edgardo Costa Maianti	DID1046US	7264
9561 7590 07/20/2009 POPOVICH, WILES & O'CONNELL, PA 8519 EAGLE POINT BLVD SUITE 180 LAKE ELMO, MN 55042			EXAMINER CHAPMAN, GINGER T	
			ART UNIT 3761	PAPER NUMBER
			MAIL DATE 07/20/2009	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Advisory Action</b> <b>Before the Filing of an Appeal Brief</b>	<b>Application No.</b> 10/804,583	<b>Applicant(s)</b> MAIANTI ET AL.	
	<b>Examiner</b> Ginger T. Chapman	<b>Art Unit</b> 3761	

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 26 June 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
 b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
 (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
 (b) ☐ They raise the issue of new matter (see NOTE below);  
 (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
 (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
 5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
 6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
 7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
 The status of the claim(s) is (or will be) as follows:  
 Claim(s) allowed: \_\_\_\_\_.  
 Claim(s) objected to: \_\_\_\_\_.  
 Claim(s) rejected: \_\_\_\_\_.  
 Claim(s) withdrawn from consideration: \_\_\_\_\_.

#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
 9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
 10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
 12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
 13. ☐ Other: \_\_\_\_\_.

/Tatyana Zalukaeva/  
 Supervisory Patent Examiner, Art Unit 3761

/Ginger T Chapman/  
 Examiner, Art Unit 3761

Continuation of 11. does NOT place the application in condition for allowance because: Applicant submits that the instant claims are drawn to a device for oxygenating and filtering blood in an extracorporeal blood circuit wherein the arterial filter is positioned on the arterial side of the oxygenator while Gremel is drawn to a heart lung machine comprising an extracorporeal blood circuit with an arterial filter positioned on the venous line receiving venous blood thus Gremel teaches modifying arterial filters. These arguments are not persuasive because both cardio and renal extracorporeal blood circuits provide filtered oxygenated blood to patients during by-pass treatment procedures. Gremel expressly discloses extracorporeal blood circuits comprising all of the claimed components/ structural elements recited in claim 1 except for a heat exchanger which is taught by De Wall and known in conventional extracorporeal blood circuits to prevent unsafe blood temperature for patients. Gremel, as detailed at pp. 3-4 of the previous Office action, teaches an extracorporeal blood circuit comprising: a bubble trap 30 having an inlet 44 for receiving venous blood and an outlet 48 for supplying venous blood; a blood pump 26 having an inlet connected to receive venous blood and an outlet; an oxygenator 28 having an inlet connected to receive venous blood and an outlet for supplying oxygenated blood; an arterial blood filter 30 having an inlet connected to receive blood and an outlet for supplying filtered blood; and a monolithic housing (fig. 4) including a first portion for defining the bubble trap (c. 2, 11.61-63), wherein the device does not comprise a venous reservoir (c. 2, 11. 26-31; abstract). Gremel additionally teaches conventional embodiments wherein an oxygenator receives venous blood and an arterial filter receives oxygenated blood and supplies oxygenated filtered blood as claimed (c. 2, ll. 19-22); the disclosure by the reference of a preferred embodiment does not teach away from the entire disclosure of the patent, all of which must be considered in the analysis of obviousness, *In re Burckel*, 201 USPQ 67, 70. Additionally, Gremel teaches at c. 1, ll. 10-13, that conventional extracorporeal blood circuits are known to comprise arterial filters; all filters are known to perform the substantially identical function of separating particles along fluid flow paths; blood circuits are known to comprise many types of filters along the flow paths for removal of various blood components; therefore one of ordinary skill in the art at the time the invention was made would be motivated to locate blood component filters at positions along blood circuit flow paths in order to provide oxygenated blood which is safe for return to a patient, and since it has been held that rearranging parts of an invention involves only routine skill in the art. *In re Japikse*, 86 USPQ 70.

Therefore the examiner respectfully traverses Applicants' arguments and maintains the art rejections of the rejected claims.